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STOCK AND LEADER,
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York, PA 17405-5167

Phone: (717) 846-9800
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BEVERLY BEAM
Plaintiff

v.

SCOTT DOWNEY,
ROGER MORRISON,
DAVID GRAYBILL
and MICHAEL SWEGER
Defendants

CIVIL ACTION NO.: 1:CV-01-0083

FILED
WILLIAMSPORT, PA

MAR 15 2001

MARY E. LINDHOLM, CLERK
Per Deputy Clerk

**DEFENDANT DOWNEY'S PARTIAL MOTION TO DISMISS AND TO
STRIKE IMPERTINENT MATTER FROM THE COMPLAINT**

Scott Downey, through his attorney and pursuant to Fed. R. Civ. P. 12(b)6 and 12(f) moves to dismiss claims pertaining to antitrust laws, breach of contract and violation of plaintiff's right to due process and to strike impertinent matter from the Complaint. In support of its Motion, Downey states the following:

1. Plaintiff states in her introductory statement and request for relief that Downey violated her right to due process, the anti-trust laws, and perpetrated a breach of contract. Complaint ¶ 1 and p. 10.

2. Plaintiff failed to allege that Downey's actions have any effect on interstate commerce in order to support an antitrust claim.
3. Plaintiff has merely made a conclusory statement regarding an alleged antitrust violation and has not alleged any facts to support that supposition.
4. Plaintiff failed to allege the existence of a contract between Plaintiff and Downey.
5. Plaintiff failed to allege any facts establishing that Downey breached any contract between Plaintiff and Downey.
6. There is no property or liberty interest in a future governmental contract.
7. There is no property or liberty interest in a specific number of miles assigned to a driver each year.
8. Plaintiff makes several allegations in Paragraphs 37-40 and 42-44 regarding alleged "racial misconduct" by Downey and the IU, specifically referencing allegedly discriminatory policies toward Black individuals.
9. Plaintiff is not Black and has made no allegations that any of her drivers are Black.
10. Plaintiff has not raised any claims based on racial discrimination.

11. Plaintiff's allegations regarding racial allegations are immaterial and impertinent to this action and are offered only to embarrass and harass Downey and the IU by attempting to sway public opinion against them.

12. Plaintiff's allegations, therefore, should be stricken from the Complaint as impertinent under Fed. R. Civ. Pro. 12(f).

WHEREFORE, for all the reasons set forth in this Motion and its Brief in Support thereof, Downey respectfully requests that this Court dismiss all claims relating to antitrust violations, breach of contract and violation of Plaintiff's right to due process and that this Court strike the allegations contained in Paragraphs 37-40, 41-44 from the Complaint.

Respectfully submitted:

STOCK AND LEADER,
A Professional Corporation

BY: Stephen S. Russell

Stephen S. Russell, Esquire

I.D. No. 17102

Melinda B. Kaufmann, Esquire

I.D. No. 82088

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CERTIFICATE OF SERVICE

AND NOW, this 14th day of March 2001, I, Melinda B. Kaufmann, Esquire, of the law firm of Stock and Leader, a Professional Corporation, attorneys for the Defendant, hereby certify that I served the foregoing DEFENDANT DOWNEY'S PARTIAL MOTION TO DISMISS AND TO STRIKE IMPERTINENT MATTER FROM THE COMPLAINT and ORDER this day by depositing the same in the United States first-class mail, postage prepaid, in York, Pennsylvania, addressed to:

Don Bailey, Esquire
4311 N. 6th Street
Harrisburg, PA 17110

Daniel P. Altland, Esquire
3401 N Front Street
Harrisburg, PA 17110

Steven J. Schiffman, Esquire
2080 Linglestown Road
Harrisburg, PA 17110

STOCK AND LEADER,
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Judge